

DRAFT
Minutes of Meeting:
Commissioner's Standardized Measures of Intellectual Functioning Review Panel

The meeting of the Commissioner's Review Panel for the selection of Standardized Measures of Intellectual Functioning (SMIFRP) was held on Wednesday, August 15, 2007. The SMIFRP was established pursuant to Section 19.2-264.3:1.1 of the Virginia Code, which directs the Commissioner to maintain an "exclusive list" of measures of intellectual functioning for use in the assessment of mental retardation with capital defendants. The members of the Panel in attendance were: William Stejskal, Ph.D., private practitioner; Prof. Dewey Cornell, Ph.D. of UVA; Prof. Jeff Barth, Ph.D., of UVA Medical School; Prof. Jack Naglieri, Ph.D., of the GMU Psychology Dept.; John Bruner, Ph.D. of VCU. Dr. Naglieri participated via teleconference.

Jane Hickey, of the Office of the Attorney General; Jamilah Scott, of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS); James J. Morris, Ph.D., DMHMRSAS Forensic Services Director; Robert Lee, of the Charlottesville Capital Defense Office of the Indigent Defense Commission (IDC), and Jon Sheldon, J.D., of Devine Connell & Sheldon, also participated in this combined organizational and work meeting.

Review and Approval of Minutes:

The meeting commenced at 10:20AM. The minutes from the initial meeting of the SMIFRP, held on April 6, 2007, were read, and it was moved that the comment, "see Dr. Cornell's summary below", noted in parentheses in paragraph 2 on page 2 of the minutes be removed; the motion was 2nd, and the motion carried. The minutes were approved with the correction noted.

Discussion of Possible Changes to Current Exclusive List:

There was discussion regarding the exclusion of historical measures from previous versions of the exclusive list. The Panel opined that criteria that the onset of MR must have occurred prior to the age of 18, and the use of multiple sources of historical records, gives credence to maintaining any prior tests used in past evaluations. The Panel noted that references to historical testing is permitted and outlined in Section 19.2-264.3:1.1 B3 of the Virginia Code. In considering the measures on the current list, and any proposed additions or deletions from the list, the group was informed by Ms. Hickey that there might be problems associated with removing items from the list, if they have been used in cases that are currently in litigation. The discussion that followed was supportive of the concept of dividing the exclusive list into two parts: The first part would include currently acceptable IQ measures; the second would be devoted to measures judged to be worthy of use for establishing a history of mental retardation.

The Preamble to the current list was reviewed, and the issue of historical records was revisited. It was suggested that the mention of historical measurements be included in the preamble section, and that a "foundation list" be composed from measurements included on prior versions of the "exclusive list". A question arose about the transition period between older and newer versions of intelligence tests currently on the list, and how the Panel would determine

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whether or not to adopt newer versions. There was some consensus for the idea that revisions or updates of previously adopted measures should be “automatically” added to the list.

Dr. Naglieri of GMU noted that tests have a limited life span; the norms can get out dated, and might not be representative of the current population, as norm samples from previous tests may not account for increase in minority populations and other previously normed sample groups. This would then hamper the quality of the instrument. The Panel briefly referred to the list of APA standards of quality for test measures that were disseminated at the initial meeting. The realities and economics of test publication, as they apply to the mission of the Panel were briefly discussed.

Continuing the discussion on the transition/grace period for use of older measurements, it was noted that evaluators often train independently on newer versions of testing measures, and although most clinicians would agree that it is best to use the most recent version of a testing instrument, it is often difficult for clinicians to quickly purchase newer versions of instruments. They may have to wait for lengthy amounts of time before their institution and or agency is able to purchase the test, at which point the evaluator would still require time to become familiar with the test procedures and scoring. The Panel decided to determine the “shelf life” of each measurement as the dates spanning from the date that the Commissioner has approved the use of the measure (after public comment period), until the time that Panel determines that the instrument be retired from the “exclusive list”.

The Panel also determined that newer versions of measurements included on the current list should be tentatively approved, until the Panel was able to convene and officially approve or disapprove the measurement, at which point if the newer version of the instrument was formally reviewed and approved, then the measurement would be approved for introduction in litigation retroactively. If necessary, the Panel could conduct an ad-hoc meeting to discuss proposed testing measures. The complexities associated with “retroactive approval” of a measure were considered.

Discussion and Planning re: The Exclusive List:

The group spent time discussing the basic characteristics that should apply to any measure that is kept on, or adopted for inclusion on the list. The Panel discussed including only those comprehensive measures of intellectual functioning that are well-normed and administered individually on the list. It was decided that the WISC-IV and the WISC-III for children, as well as the Leiter-R and the Multidimensional Aptitude Battery-II be removed from the list. The remaining instruments are the WAIS-III, Stanford-Binet V Edition (SB5), Kaugman Adolescent and Adult Intelligence Test (KAIT), and the Reynolds Intellectual Assessment Scales (RAIS). It was suggested that the age ranges noted on the list be removed.

The Panel discussed consideration of exceptional groups e.g. those with language and disabling conditions. The Panel revisited the issue of non-verbal vs. verbal testing and the appropriateness of utilizing tests that have been normed over a more diverse population of intelligences; Dr. Naglieri stated his position that there are verbal and non-verbal intelligence tests, but that non-verbal testing counters the effects of language or educational barriers. The argument was made that research indicates that non-verbal tests are no less valid than verbal tests, however it was noted that, while this may be true for someone functioning with a normal IQ, it might not be representative of persons with disabilities, such as those who have MR. Ms.

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Hickey stated that the Commissioner has been charged with developing the “exclusive list”, that separate categories for each type of test i.e. verbal, non-verbal, etc. might not be feasible. It was decided that any tests used to accommodate the needs of special groups should be used as supplementing at least one test from the “exclusive list”.

The Panel stated that the new draft of the “exclusive list” would be published and open to a public comment period of 30-60 days, and that the list will be placed on the DMHMRSAS website in the “What’s New” section of the agency’s site. It was suggested that the Dept. also consider placing the document on the “Virginia Regulatory Town Hall” website. The Panel decided that the revised list would include “retired” measures with the date of retirement, along with currently accepted measures, with a designated effective date. The list of currently acceptable measures was reviewed and approved by the Panel.

Discussion of Preamble:

The Panel agreed that the list would be narrowly construed as meeting the requirements of B1 [of § 19.2-264.3:1.1], but not B3 or any other code section, and that there would be a statement clarifying this intention in the preamble. It was also agreed that the list would be limited to individually administered comprehensive tests of intelligence.

The Panel decided that reference to the “Flynn effect” would be removed from the preamble section. It was also agreed that the sentence “It should also be noted that the publishing of this list should not preclude the introduction of specialized measures of neuropsychological or cognitive functioning that may be of relevance to a particular case”, would be removed, and that a statement regarding specialized populations, and the use of measurements to assess such populations, would instead be included in the preamble. The Panel stated that exceptions to the list would include those conditions that might invalidate the administration or results of the tests if not taken into consideration.

It was decided that the bold text in the preamble, urging evaluators to contact the DMHRSAS Office of Forensic Services for consideration of any additional measures of intellectual functioning for inclusion on the list, should be removed, as this might set precedent for approving the use of specific instruments in particular cases. It was also decided to remove the sentence “Please also note that § 19.2-264.3:1.1(B), paragraph 3 provides that: Assessment of developmental origin shall be based on multiple sources of information generally accepted by the field of psychological testing and appropriate for the particular defendant being assessed, including, whenever available, educational, social service, medical records, prior disability assessments, parental or caregiver reports, and other collateral data, recognizing that valid clinical assessment conducted during the defendant’s childhood may not have conformed to current practice standards”, as this statement refers to the testing process involved in capital sentencing and not solely the charge of the Commissioner, which is to simply develop a list of exclusive measures.

Draft Exclusive List

The following list of measures, and the accompanying introductory language was adopted by the Panel, to be put into effect following the 30 day public comment period, if no additional information indicates that other action should be taken:

DRAFT: List of Standardized Measures of Intellectual Functioning

This “exclusive” list of intellectual assessment measures has been compiled in accordance with § 19.2-264.3:1.1 of the *Code of Virginia*. Please note that any new editions, revisions, updates or corrections to the measures that are currently in effect for the purposes established in *Code of Virginia* § 19.2-264.3:1. will be considered as included on this list, unless otherwise specified, from the date of publication of the new edition, revision update or correction.

Use of a test on this list does not preclude use of other psychological measures for supplementing the determination of mental retardation when assessing developmental origin as provided in § 19.2-264.3:1.1(B) (3), or when conditions exist that make the use of these tests invalid or incomplete, such as language incompatibility or severe disabling conditions.

DRAFT DMHMRSAS List of Standardized Measures of Intellectual Functioning: Effective ____, 2007		
Name of Test	Publisher	Status
Wechsler Adult Intelligence Scale-Third Edition (WAIS-III) (Includes nonEnglish language versions, if available) (Previous editions of this measure applicable for historical verification of IQ.)	Harcourt Assessment (The Psychological Corporation) 19500 Bulverde Rd. San Antonio, TX 788259-3701	Included as a current measure .
Stanford-Binet Intelligence Test, Fifth Edition (SB5) (Previous editions of this measure applicable for historical verification of IQ.)	Riverside Publishing 425 Spring Lake Drive Itasca, IL 60143-2079	Included as a current measure .
Kaufman Adolescent and Adult Intelligence Test (KAIT) (Includes non-English language versions, if available) (Previous editions of this measure applicable for historical verification of IQ.)	Psychological Assessment Resources, Inc. 16204 N. Florida Ave. Lutz, FL 33549	Included as a current measure .
Reynolds Intellectual Assessment Scales (RIAS)	Psychological Assessment Resources, Inc. 16204 N. Florida Ave. Lutz, FL 33549	Included as a current measure .
Stanford-Binet Intelligence Test-Fourth Edition (SBFE)	Riverside Publishing 425 Spring Lake Drive Itasca, IL 60143-2079	This measure was retired from the List as of the above effective date.
Wechsler Intelligence Scale for Children-Third Edition (WISC-III).	The Psychological Corporation 19500 Bulverde Rd. San Antonio, TX 788259-3701	This measure was retired from the List as of the above effective date.
Leiter International Performance Scale-Revised (Leiter-R)	Psychological Assessment Resources, Inc. 16204 N. Florida Ave. Lutz, FL 33549	This measure was retired from the List as of the above effective date.

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General Ability Measure for Adults (GAMA)	Pearson Assessments P.O. Box 1416 Minneapolis, MN 55440	This measure was retired from the List as of the above effective date.
Multidimensional Aptitude Battery-II	Psychological Assessment Resources, Inc. 16204 N. Florida Ave. Lutz, FL 33549	This measure was retired from the List as of the above effective date.
Slosson Full-Range Intelligence Test (S-FRIT)	Psychological Assessment Resources, Inc. 16204 N. Florida Ave. Lutz, FL 33549	This measure was retired from the List as of the above effective date.
Beta III	Harcourt Assessment (The Psychological Corporation) 19500 Bulverde Rd. San Antonio, TX 788259-3701	This measure was retired from the List as of the above effective date.
Wechsler Intelligence Scale for Children-Fourth Edition	Harcourt Assessment (The Psychological Corporation) 19500 Bulverde Rd. San Antonio, TX 788259-3701	This measure was retired from the List as of the above effective date.

Follow-up and Scheduling of the next meeting:

There was discussion of how many times per year the group should meet, with quarterly or semi-annually meetings being the most popular options.

The Panel agreed that it would meet to discuss any public comments and will set a date for such meeting at the commencement of the public comment period.